

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: McKenzie Dean	Team: Squad #14	CCRB Case #: 202002040	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 03/01/2020 9:50 PM	Location of Incident: West 25th Street, between 10th Avenue and 11th Avenue	Precinct: 10	18 Mo. SOL 9/1/2021	EO SOL 4/18/2022	
Date/Time CV Reported Wed, 03/11/2020 11:09 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 03/11/2020 11:09 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Shawn Reiss	16193	957914	PSA 4

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Freddy Ortega	01281	954197	PSA 4
2. POM Vincent Ayres	16511	957345	PSA 4

Officer(s)	Allegation	Investigator Recommendation
A.POM Shawn Reiss	Abuse: Police Officer Shawn Reiss stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Shawn Reiss	Abuse: Police Officer Shawn Reiss interfered with § 87(2)(b)'s use of a recording device.	
C.POM Shawn Reiss	Abuse: Police Officer Shawn Reiss questioned § 87(2)(b)	
D.POM Shawn Reiss	Discourtesy: Police Officer Shawn Reiss spoke discourteously to § 87(2)(b)	

### Case Summary

On March 11, 2020, § 87(2)(b) filed this complaint with the CCRB over the phone.

On March 1, 2020 at approximately 9:50 PM, § 87(2)(b) was driving on West 25<sup>th</sup> Street in Manhattan when his vehicle was stopped between 10<sup>th</sup> and 11<sup>th</sup> Avenue by Police Officer Shawn Reiss, Police Officer Vincent Ayres, and Police Officer Freddy Ortega, of PSA 4 (Allegation A: Abuse of authority – Vehicle stop, § 87(2)(g) Police Officer Reiss told § 87(2)(b) the officers pulled him over because he ran a red light and allegedly said he was speeding, both of which § 87(2)(b) disputed.

While at the passenger-side window, Police Officer Reiss shined his flashlight into the car and allegedly directed it toward § 87(2)(b)'s cell phone, which was propped up in the cupholder in the center console recording a video (Allegation B: Abuse of authority – Interference with recording, § 87(2)(g) Police Officer Reiss asked § 87(2)(b) why his car smelled like marijuana (Allegation C: Abuse of Authority – Question, § 87(2)(g) While speaking with § 87(2)(b) Police Officer Reiss used the words “fucking” and “asshole” (Allegation D: Discourtesy, § 87(2)(g) The officers let § 87(2)(b) go and he was not arrested or summonsed.

§ 87(2)(b) stated he took a video during the incident, which he did not provide to the investigation, despite attempts by the CCRB to obtain it from him. Body-worn camera (BWC) videos from the BWCs of Police Officer Ayres, Police Officer Ortega, and Police Officer Reiss were received. The footage is in IAs #40-42 (BR 01; BR 02; BR 03) and summarized in IA #43 (BR 04).

### Findings and Recommendations

#### Allegation (A) Abuse of Authority: Police Officer Shawn Reiss stopped the vehicle in which § 87(2)(b) was an occupant.

On March 18, 2020, § 87(2)(b) was interviewed over the phone (BR 05). On January 19, 2021, Police Officer Reiss was interviewed (BR 06).

It is undisputed that Police Officer Reiss stopped § 87(2)(b)'s vehicle and Police Officer Reiss told § 87(2)(b) he ran a red light. The officers let § 87(2)(b) go without issuing him a summons.

§ 87(2)(b) stated he was driving on West 25<sup>th</sup> Street, when he approached a traffic light, and drove through it. The light turned red after § 87(2)(b) had passed the double white line and the crosswalk, which was before the intersection. § 87(2)(b) continued driving toward 11<sup>th</sup> Avenue, when a marked SUV indicated to § 87(2)(b) to pull over with lights and sirens. Police Officer Reiss approached § 87(2)(b)'s vehicle and told § 87(2)(b) he ran a red light and he was speeding.

Police Officer Reiss stated he noticed § 87(2)(b) drive through a red light in the intersection of West 25<sup>th</sup> Street and 10<sup>th</sup> Avenue, when he was 50 feet behind § 87(2)(b)'s vehicle. § 87(2)(b)'s car had a loud exhaust, which drew Police Officer Reiss' attention to it as § 87(2)(b) accelerated through the intersection. Police Officer Reiss told his partners § 87(2)(b)'s car ran the red light. Police Officer Reiss said something along the lines of, “We’re gonna stop this car right,” and one of the officers responded yes. The officers collectively decided to stop the vehicle. Police Officer Reiss approached § 87(2)(b)'s vehicle and told him that the officers stopped him because he ran the red light.

At 00:50 into Police Officer Reiss' BWC video (BR 03), he tells § 87(2)(b) he ran a red light. § 87(2)(b) says he did not run the red light and he has a GoPro on his car that would prove this. At 05:40 into the video, Police Officer Reiss tells § 87(2)(b) he drove through a yellow light, and says, “Yellow means you have to stop not blast through.” He tells § 87(2)(b)

his car is loud, and it catches attention. § 87(2)(b) reiterates he has a GoPro camera on his car and says he did not blast through the intersection.

§ 1111 of New York Vehicle and Traffic Law (BR 14) states that traffic facing a steady circular yellow signal may enter the intersection; however, said traffic is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter.

§ 87(2)(g)

§ 87(2)(g)

**Allegation (B) Abuse of Authority: Police Officer Shawn Reiss interfered with § 87(2)(b)'s use of a recording device.**

§ 87(2)(b) stated to the CCRB that he was recording on his cellphone during the incident, though he failed to provide the footage to the CCRB, and Police Officer Reiss stated to the CCRB that he believed § 87(2)(b) was recording during the incident. It is undisputed that Police Officer Reiss shined his flashlight inside § 87(2)(b)'s vehicle toward the center console during the entire duration of the traffic stop.

§ 87(2)(b) stated Police Officer Reiss pointed his flashlight toward his cell phone so that the video recording would not capture his face. Police Officer Reiss obscured two minutes of the video recording § 87(2)(b) took during the incident.

Police Officer Reiss stated that upon approaching the vehicle, § 87(2)(b)'s hand was behind his phone resting on the center console. Police Officer Reiss directed his flashlight toward § 87(2)(b)'s hand to watch his "movements." When asked why he did this, Police Officer Reiss stated § 87(2)(b) could have possibly had a weapon that could harm him, his partners, or others nearby. There was no other reason he directed his flashlight in this way. Police Officer Reiss stated he pointed his flashlight toward that location as long as § 87(2)(b)'s hand was behind the phone and if § 87(2)(b) moved his hand, he moved his flashlight to follow its movements.

From 00:45 to 06:20 in Police Officer Reiss' BWC video (BR 03), he directs his flashlight inside the vehicle toward the center console, where both § 87(2)(b)'s phone and hand are. § 87(2)(b) does not move his hand away from the center console at any point during the video.

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Shawn Reiss questioned § 87(2)(b)**

It is undisputed that Police Officer Reiss asked § 87(2)(b) why his car smelled like marijuana and § 87(2)(b) denied that it did.

§ 87(2)(b) said he did not have marijuana on his person or in his vehicle during the incident. However, he stated he smoked marijuana in his house two to two-and-a-half hours prior to encountering the officers.

Police Officer Reiss stated that upon approaching the front passenger-side of § 87(2)(b)'s vehicle, he noticed the car smelled like marijuana. He did not know if the smell was burnt or vegetative marijuana because he was unable to distinguish between these smells.

In *People v. Chestnut*, 43 A.D.2d 260 (BR 08), the court held that the smell of marijuana smoke emanating from an automobile can be sufficient to provide police officers with probable cause to search an automobile and its occupants.

Patrol Guide Procedure 212-11 (BR 12) states an officer can ask a civilian pointed or accusatory questions when he has a founded suspicion that criminal activity is afoot. Founded suspicion of criminal activity arises when the officer has sufficient information to begin to suspect the person of criminal conduct based on observable conduct or reliable hearsay information.

§ 87(2)(g)

**Allegation (D) Discourtesy: Police Officer Shawn Reiss spoke discourteously to § 87(2)(b)**

It is undisputed that Police Officer Reiss told § 87(2)(b) "I'm trying to talk to you man-to-man, not like a fucking asshole. I know some of us can be assholes."

When asked why he used profanity during his conversation with § 87(2)(b) Police Officer Reiss stated he did this in the heat of the moment and it was "just talking." Police Officer Reiss said he believed § 87(2)(b) cursed a couple times as well and they were just having a normal conversation.

Patrol Guide Procedure 200-02 (BR 07) states that officers must render services with courtesy and civility.

Officers may use profanities "in the context of a dynamic situation over which [he or she is] attempting to gain control," but may not do so when it "[serves] no legitimate purpose but to belittle" a civilian (*PD v. Pichardo*, DAO DCT Case Number 2015-15012) (BR 13).

§ 87(2)(g)

**Civilian and Officer CCRB Histories**

- § 87(2)(b) has been a party to two other CCRB complaints and has been named a victim in six other allegations (BR 11).

- § 87(2)(b)

§ 87(2)(b)

- Police Officer Shawn Reiss has been a member of service for 6 years and has been a subject in one other CCRB complaint and three other allegations, none of which have been substantiated. § 87(2)(g)

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- As of February 1, 2021, as per the NYC Comptroller's Office, no Notice of Claim has been filed regarding this incident (**BR 10**).

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Squad No.: 2

Investigator: Inv. Dean Inv. Dean 12/27/21  
Signature Print Title & Name Date

Squad Leader: Cassandra Fenkel IM Cassandra Fenkel 12/27/2021  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date